

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

RICHARD BENTON, CRD #1027495;

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-OS-0022

The Utah Division of Securities ("Division"), by and through its Director of Licensing, George Robison, and Richard Benton ("Respondent") hereby stipulate and agree as follows:

1. Respondent was the subject of an investigation conducted by the Division into allegations that Respondent acted in violation of the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*
2. On May 23, 2005, the Division filed a Petition for Order of Censure, Suspension of License and Imposition of Fine against Respondent.
3. In lieu of proceeding with the formal action, Respondent and the Division have agreed to settle this matter by way of this Stipulation and Consent Order ("Stipulation"). If approved, the Stipulation will fully resolve all claims the Division has against Respondent pertaining to this matter.

4. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.
5. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on Respondent's behalf.
6. Respondent has read the Stipulation, understands its contents and enter into this Stipulation voluntarily. No promises or threats have been made by the Division, nor by any member, officer, agent, or representative of the Division, to induce Respondent to enter into this Stipulation.
7. Respondent is represented by attorney Bruce Badger and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

The Division makes the following findings:

Background

8. Respondent is currently licensed as a broker-dealer agent, general securities principal and an options principal with eplanning Securities, Inc.
9. Prior to working for eplanning, Respondent was associated with Round Hill Securities, Inc., ("Round Hill") from October 25, 1996 through November 5, 2003. Respondent resigned from Round Hill on November 5, 2003.
10. On or about October 1, 2003, the Division received a complaint letter from an attorney of H. Wyatt ("Wyatt") concerning Stephen Nebeker ("Nebeker"), a broker-dealer agent of Round Hill who was supervised by Benton.

11. Wyatt's letter alleged that Nebeker had excessively traded Wyatt's account, made unsuitable recommendations, and failed to disclose costs and fees associated with the investments sold to Wyatt.

The Division's investigation into Wyatt's complaint letter revealed the following:

Excessive Trading

12. Two of Wyatt's accounts, an IRA account and a trust account showed excessive trading by Nebeker.

Wyatt IRA Account

13. On or about October 10, 2000, Round Hill opened an IRA account for Wyatt which listed Nebeker as the broker-dealer agent of record on the account.
14. From September 2001 to August 2003, Wyatt deposited \$41,403.17 into Wyatt's IRA account. During that time, the account generated \$18,426.77 in commissions and ticket charges. Commissions are fees paid to a broker-dealer and/or broker-dealer agent for executing a trade. A ticket charge is a transaction fee meant to cover costs related to processing a transaction (e.g., record-keeping costs).
15. The portfolio was turned over the equivalent of 9.6 times a year. Given the commissions and other expenses, the account would have to have earned 44.78% annually to merely break-even.
16. During a 24 month period, Wyatt's account value decreased from an initial deposit of \$41,403.17 to \$13,960.

17. According to trade tickets and confirmations, most of the transactions in Wyatt's account were made based on Nebeker's recommendations.
18. Many of the stocks in Wyatt's account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.
19. According to Round Hill's initial new account form, Wyatt is retired with an approximate annual income of \$50,000, an approximate net worth of \$500,000 and investment objectives of "growth [and] income."
20. At the time of the account opening, Wyatt was 61 years old; however, Wyatt's initial new account form lists the "approximate age" of Wyatt as 50.
21. An updated new account form was completed on March 5, 2002. According to the updated new account form, Wyatt is retired with an approximate annual income of \$50,000, an approximate net worth of \$1,700,000 and investment objective of "growth – trading."
22. Another updated new account form was completed in August of 2002. According to this updated new account form, Wyatt is retired with an approximate annual income of \$75,000, an approximate net worth of \$1 million and an investment objective of "aggressive."
23. Wyatt's signature does not appear on the initial or updated forms.
24. Wyatt informed Nebeker that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.

25. Round Hill sent a letter to Wyatt dated August 9, 2002 (just prior to Wyatt's account form being updated on August 12th to reflect a new investment objective of "aggressive").

This letter commonly referred to as "happiness letter," was designed to inform Wyatt that a change was made and giving an opportunity to express any objections.

26. The "happiness" letter was sent by Respondent who supervised, Nebeker and was a standard form letter Round Hill sent out based on the activity in a client's account. The letter stated:

"It is the policy of [Round Hill], along with branch managers such as myself, to periodically review client accounts in the interest of confirming that the activity in an account is consistent with the goals, time horizon, financial capability and risk tolerance of the account owner. During a standard review of customer accounts, your accounts have been brought to our attention. First of all, I would like to express my appreciation for your business. You are a valued client and I want to ensure that we maintain open lines of communication. The purpose of this letter is not to restrict the manner in which you conduct your business at [Round Hill], but rather to advise you of the inherent risks associated with your account activity and positions, and to confirm that they are in line with your current investment objectives. Please sign below to confirm that you are aware of the activity and holdings in your accounts..."

27. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an "aggressive" investment objective).

28. Despite Wyatt's signature, the Division deems this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity.

Moreover, this type of trading strategy was not suitable for Wyatt given her specific facts or circumstances.

29. The “happiness letter” is vague and ambiguous in that it does not specifically discuss what type of activity is occurring in Wyatt’s account, why this activity might be problematic, losses suffered in Wyatt’s accounts, or the “inherent risks” associated with the activity in her account.

Wyatt Trust Account

30. On December 7, 1999 Round Hill opened an account for the Wyatt Trust, listing Wyatt as the trustee and Nebeker as the broker-dealer agent of record on the account.
31. From July 2000 to August 2003, Wyatt deposited \$150,000 into the trust account. During that time, the account generated \$41,167.69 in commissions and ticket charges.
32. The portfolio was turned over the equivalent of 4.92 times a year. Given the commissions and other expenses, the account would have to earn 17.80% annually to merely break-even.
33. During a 37 month period. Wyatt’s account value decreased from an initial deposit of \$150,000 to \$54,492.03.
34. According to trade tickets and confirmations of Round Hill, most of the transactions in Wyatt’s account were made based on Nebeker’s recommendations.
35. Many of the stocks in the account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.
36. There was no initial new account form for Wyatt’s trust account in the account documentation provided by Round Hill. Round Hill did provide three account update forms: the first dated March 12, 2002, the second dated August 12, 2002 and signed by

principals on August 12th and 13th and the third dated August 12, 2002 signed by principals on August 15th and 16th.

37. According to the March 2002 updated new account form, Wyatt is retired with an approximate annual income of \$50,000 (despite the fact that the March 2002 updated account form for Wyatt's IRA lists Wyatt's annual income as \$75,000) and an approximate net worth of \$1,700,000. Wyatt's investment objective is listed as "growth, trading."
38. According to the August 2002 updated new account forms, Wyatt is retired with an approximate annual income of \$75,000 and an approximate net worth of \$1 million. Wyatt's investment objective is listed as "aggressive growth."
39. Wyatt's signature does not appear on the account update forms.
40. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.
41. Round Hill provided a copy of a "happiness letter", dated August 9, 2002 (just prior to Wyatt's account form being updated on August 12th to reflect a new investment objective of "aggressive growth"). This letter was sent by Respondent and is the same standard form letter Round Hill sent to Wyatt regarding her IRA account.
42. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an "aggressive growth" investment objective).

43. Despite Wyatt's signature, the Division deems this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity. This letter is vague and ambiguous in that it does not specifically discuss what type of activity is occurring in Wyatt's account, why this activity might be problematic, losses suffered in Wyatt's accounts, or the "inherent risks" associated with the activity in her account. Moreover, this type of trading strategy was not suitable for Wyatt given her specific facts and circumstances.
44. According to Nebeker's CRD disclosure, on November 6, 2003, Wyatt filed a lawsuit in U.S. District Court. On December 18, 2003, Wyatt's suit was moved to NASD Arbitration. On August 31, 2004, Wyatt reached a settlement agreement whereby Wyatt received \$90,000 from Round Hill.

Failure to Supervise

45. As part of its supervisory system, Round Hill obtained monthly exception reports from Bear, Stearns Securities Corp. ("Bear Stearns"). One such exception report is the "Big Issues" exception report which identifies activity in client accounts that raise a red flag (e.g., account turnover, account performance, commissions generated from an account, etc.).
46. Round Hill provided a summary of the number of Big Issues reports generated for Wyatt's two accounts.
47. During an 18-month period from July 2001 through December 2002, either one or both of Wyatt's accounts were listed on the Big Issues report for 11 of the 18 months. For Wyatt's account, the activities in question on these Big Issue reports were account

turnover, account concentration, account performance, and commissions generated from the account.

48. Based on the documentation provided by Round Hill, the Big Issues reports were provided to Terry Emfinger (“Emfinger”), Respondent and Nebeker’s Regional Sales Supervisor, and either Respondent or Nebeker.
49. Respondent and Nebeker were subsequently required to submit an Account Report Form providing specific client information and Nebeker’s comments relating to the account.
50. According to Round Hill’s Big Issues summary report, Round Hill did not provide Big Issues reports to Emfinger, Respondent or Nebeker for six out of the 11 months in which one or both of Wyatt’s accounts was/were listed on the monthly Big Issues report and therefore did not require Respondent and Nebeker to submit account reports discussing the relevant activity.
51. According to comments on the summary report, Round Hill’s Compliance Department relied on past responses provided by Respondent and Nebeker for those six months.
52. Round Hill provided seven Account Report Forms completed by Nebeker and Respondent for one or both of Wyatt’s accounts. On these report forms, Nebeker was required to provide the client’s age; occupation; annual income; liquid net worth; net worth; primary investment objective; the approximate date the client’s objectives, income, liquid net worth, and net worth figures were last obtained from the client; the percentage of trades recommended by Nebeker; how often Nebeker spoke with the client; the approximate profit and loss in the account; and an explanation as to account activity

and strategies, client sophistication, recent changes in client objectives, changes from past patterns of investing, etc.

53. Four of Nebeker's seven explanations on the report forms indicate that Wyatt is going to be transferring large sums into her accounts at Round Hill and that Nebeker had known Wyatt for many years.
54. Despite Wyatt's representations to the contrary, Nebeker states on four of the seven report forms that Wyatt wants to be aggressive with her account and that she is very knowledgeable and intelligent vis à vis the market and her investments. Furthermore, it appears that Nebeker copied some of his explanations from previous report forms.
55. In a handwritten statement dated February 7, 2003, Respondent stated that with regards to a Big Issues report generated on Wyatt's two accounts, there is a "happiness letter" on file from August 12, 2002. Respondent further stated that Wyatt "now owns the Eaton Vance Income F[un]d" and that he will "monitor the accounts and if she begins to trade again, I will contact her and obtain a new letter."
56. In the documentation provided by Round Hill, there were only two "happiness letters" addressed to Wyatt: the August 12, 2002 letter signed by Wyatt and discussed above and a November 5, 2002 letter that is signed by Emfinger, but not by Wyatt.
57. In a typewritten statement dated August 6, 2002, Respondent states that he had "spoken to Wyatt 4 to 5 times in the last year, and she is aware of the activity, losses and commission credit in the account. All commissions in the account have been regular and below."

58. In another typewritten statement dated November 5, 2003, Benton stated:

“[Wyatt] always knew what was in her account and approximately the price when I spoke to her about her investments. She was in the office at least once a quarter, often more than that. I would speak to her most times when she was in the office, although not always about her investments. I review the trade blotter every day. I know that many of her trades were unsolicited because I took some of [t]hem from her over the phone when Mr. Nebeker was out of the office. We also have “Big Issue” reports that relate to various things in accounts; turnover, commissions, losses, etc. When these came out I would have Mr. Nebeker write a response to the issue and I would review the account. I would speak to Mrs. W. to discuss her account and on at least two occasions we also had her sign a letter concerning her account. She usually came into the office to sign these or to hand deliver them...”

59. Despite Respondent’s representation to the contrary, most of the trades in Wyatt’s account were solicited trades. Additionally, despite Respondent’s representation to the contrary, Round Hill has only provided proof of one “happiness letter” being signed by Wyatt and, as discussed above, the Division deems that letter to be insufficient. There is no other evidence of any additional supervisory or compliance review conducted on Wyatt’s accounts.

60. Additionally, Respondent’s CRD disclosure record indicates that Round Hill initiated an internal review on Respondent “because the number of client complaints originating from [Benton’s] office between 2001-2003 indicated a lack of supervision.” Respondent voluntarily resigned while under internal review .

61. The above findings evidence that Respondent and Round Hill failed to reasonably supervise Nebeker and as a result Nebeker was able to engage in excessive trading and make unsuitable investment recommendations in Wyatt’s accounts.

II. CONCLUSIONS OF LAW

62. Respondent failed to supervise Nebeker, who made unsuitable recommendations and excessively traded Wyatt's accounts, warranting disciplinary sanctions under Utah Code Ann. § 61-1-6(2)(j).

III. ADMISSIONS BY RESPONDENT

63. Respondent admits to the foregoing violations of the Act.

IV. REMEDIAL ACTION/SANCTIONS

64. Respondent shall pay a fine to the Division in the amount of \$5,000 to be paid in quarterly installments of \$1000 with the first payment to be made upon the filing of the Stipulation.
65. Respondent shall be prohibited from acting in the capacity of a securities supervisor in the state of Utah.

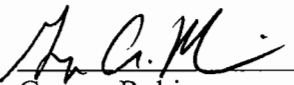
V. FINAL RESOLUTION

66. Respondent acknowledges that this Order, upon approval by the Division Director and Securities Advisory Board shall be the final compromise and settlement of this matter. Respondent further acknowledges that if the Division Director and Securities Advisory Board do not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
67. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against Respondent arising in whole or in part from Respondent's actions, and that the Order does not affect any criminal cause of action that a prosecutor might bring.

68. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities

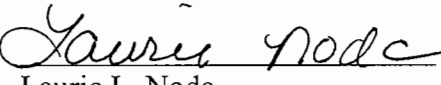
Date: 8/8/06

By: 
George Robison
Director of Licensing

Date: 8-8-06

By: 
Richard Benton

Approved:


Laurie L. Noda
Assistant Attorney General

Approved:


Bruce P. Badger

ORDER

Based on the foregoing, the Director hereby:

1. Enters as its own findings, the Findings of Fact described in Section I, above.
2. Enters, as it own conclusion, the Conclusions of Law described in Section II, above.

3. Orders that:

- a. Respondent pay a fine to the Division in the amount of \$5,000 to be paid in quarterly installments of \$1000 with the first payment to be made upon the filing of the Stipulation, and
- b. Respondent be prohibited from acting in the capacity of a securities supervisor in the state of Utah.

DATED this 9th day of August, 2006.



WAYNE KLEIN

Director, Utah Division of Securities



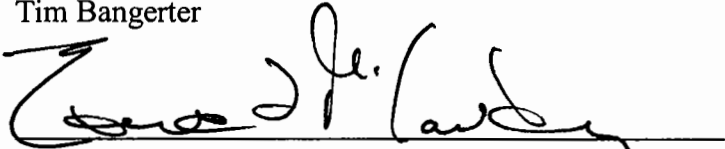
BY THE UTAH SECURITIES ADVISORY BOARD:

The foregoing Order is hereby accepted, confirmed and approved by the Utah Securities
Advisory Board.

DATED this 16 day of August, 2006.



Tim Bangerter



Edward L. McCartney

Laura Polacheck

Mark Pugsley



Craig Skidmore

Certificate of Mailing

I certify that on the 17th day of August, 2006, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Bruce P. Badger
Fabian & Clendenin
215 South State Street Suite 1200
Salt Lake City, UT 84111

7006 0100 0001 7688 8893

Pamela Radzick
Executive Secretary